IN THE

# Supreme Court of the United States

October Term, 1956.

No. 304.

UNITED STATES OF AMERICA,
*Petitioner,*

*v.*

VICTOR CALAMARO.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

# BRIEF FOR THE RESPONDENT.

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## BRIEF FOR THE RESPONDENT.

### QUESTION PRESENTED.

Whether a salaried "pick-up man", who has no contact with any person placing a wager in a numbers lottery and handles no money, "is engaged in receiving wagers for or on behalf of" the "banker" who operates the lottery within the meaning of Section 3290 of the Internal Revenue Code of 1939.

### STATUTE AND REGULATIONS INVOLVED.

In addition to those parts of Chapter 27A of the Internal Revenue Code of 1939 (26 U.S.C., 1952 ed.) which are set forth in the Government's Brief, pp. 2-4, the following provision is pertinent:

SUBCHAPTER A—TAX ON WAGERS.

* * *

§ 3286. CREDITS AND REFUNDS.

* * *

(b) Where any taxpayer lays off part or all of a wager with another person who is liable for tax under this subchapter on the amount so laid off, a credit

against the tax imposed by this subchapter shall be allowed, or a refund shall be made to, the taxpayer laying off such amount. Such credit or refund shall be in an amount which bears the same ratio to the amount of tax which such taxpayer paid under the subchapter on the original wager as the amount so laid off bears to the amount of the original wager. Credit or refund under this subsection shall be allowed or made only in accordance with regulations prescribed by the Secretary; and no interest shall be allowed with respect to any amount so credited or refunded.

The regulation applicable to the tax on wagers is Treasury Regulation 132 (26 C. F. R., 1956 supp.); the pertinent provisions thereof are as follows:

SUBPART C—EXCISE TAX ON WAGERING.

* * *

§ 325.21. SCOPE OF TAX.

* * *

(b) A person is engaged in the business of accepting wagers if he makes it a practice to accept wagers with respect to which he assumes the risk of profit or loss depending upon the outcome of the event or the contest with respect to which the wager is accepted . . .

* * *

§ 325.24. Person liable for tax.—(a) Every person engaged in the business of accepting wagers with respect to a sports event or a contest is liable for the tax [the 10% excise tax imposed by section 3285 of the Code] on any such wager accepted by him. Every person who operates a wagering pool or lottery conducted for profit is liable for the tax with respect to any wager or contribution placed in such pool or lottery. To be liable for the tax, it is not necessary that the person engaged in the business of accepting wagers or operating a wagering pool or lottery physically receive the wager or contribution. Any wager or contribution

received by an agent or employee on behalf of such person shall be considered to have been accepted by and placed with such person.

* * *

§ 325.25: When tax attaches.—(a) The tax attaches when (1) a person engaged in the business of accepting wagers with respect to a sports event or a contest, or (2) a person who operates a wagering pool or lottery for profit, accepts a wager or contribution from a bettor. In the case of a wager on credit, the tax attaches whether or not the amount of the wager is actually collected from the bettor.

* * *

§ 325.32. Records.—(a) In general.—(1) Every person required to pay the excise tax imposed by section 3285 shall keep, or cause to be kept, . . . such records as will clearly show as to each day's operation:

* * *

(C) Separately, the gross amount of wagers—

(i) accepted directly by the taxpayer or at any registered place of business of the taxpayer (other than laid-off wagers),

(ii) accepted for his account by agents at any place other than a registered place of business of the taxpayer (other than laid-off wagers), and

(iii) accepted as laid-off wagers from persons subject to the excise tax;

* * *

(2) If a taxpayer has any agents or employees receiving wagers on his behalf, he shall maintain a separate record showing the name and address of each agent or employee, the period of employment, and the number of the special tax stamp issued to each such agent or employee.

* * *

OCCUPATIONAL TAX—WAGERING.

* * *

§ 325.41. Persons liable for tax.—Every person who is liable for the 10 percent excise tax imposed on wagers by section 3285 of the Internal Revenue Code and every person who is engaged in receiving wagers for or on behalf of any other person so liable is liable for the special tax.

Example (1).—A person is engaged in the business of accepting horse race bets. He employs ten persons to receive on his behalf wagers which are transmitted by telephone. He also employs a secretary and bookkeeper.

A and each of the ten persons who receive wagers by telephone are liable for the special tax. The secretary and bookkeeper are not liable unless they also receive wagers for A.

Example (2).—B operates a numbers game. He has an arrangement with ten persons, who are employed in various capacities, such as bootblacks, elevator operators, news dealers, etc., to receive wagers from the public on his behalf. B also employs a person to collect from his agents the wagers received on his behalf.

B, his ten agents, and the employee who collects the wagers received on his behalf are each liable for the special tax.

* * * *

§ 325.51. Records of agent or employee.—Every person who is engaged in receiving wagers of a type described in section 325.21 for or on behalf of another person (at any place other than a registered place of business of such other person), shall keep a record showing for each day (1) the gross amount of such wagers received by him, (2) the amount, if any, retained as a commission or as compensation for receiv-

ing such wagers, and (3) the amount turned over to the person on whose behalf the wagers were received, and the name and address of such person. The records required by this section shall, at all times, be open for inspection by internal revenue officers, and they shall be maintained for a period of at least four years from the date the wager was received.

## STATEMENT OF THE CASE.

In order to determine whether Section 3290 of the Internal Revenue Code of 1939[1] requires the payment of the special occupational tax by respondent, it is necessary to examine the manner in which a numbers lottery is conducted. The evidence produced at respondent's trial indicates the following (R. 15-16):

A wager in a numbers lottery is called a "play", and the person placing the wager is known as a "player". The operator of the lottery—the one to whom the profits from the operation belong and who controls the set up—is commonly referred to as the "banker" and his place of operation as the "bank". Among those employed by the banker are the "writer" and the "pick-up man". Wagers are made generally on three digit numbers. The banker may employ various systems for determining the winning number; among those in use are the daily reports of wagering at race tracks and the daily reports of the United States Treasury Department.

The player does not come into contact with the bank or banker either in placing his wager or in collecting his winings. Instead, he is visited by or meets a writer to whom he gives his play and the amount of money which he desires to risk thereon. The writer makes a record of the play in triplicate, using white, yellow and tissue slips. In the upper right-hand corner of the slip there is a code symbol

1. All statutory references are to the Internal Revenue Code of 1939, Title 26, U. S. C. (1952 ed.) unless otherwise indicated.

by means of which the banker may identify the writer who received the wager. The tissue slip is given to the player, and the white slip is retained by the writer. The yellow slip is sent to the bank, and it is at this point that the pick-up man enters the picture. Each day the pick-up man contacts the writers employed by the banker, collects the yellow slips, and brings them to the bank. There is no evidence that the pick-up man also collects the money which was received by each writer from the players. When the winning number has been determined, the banker delivers to each writer sufficient money to enable the latter to make the required payments to the winning players; there is nothing in the record to indicate that the pick-up man takes any part in this phase of the operation.

Respondent was a salaried pick-up man. He was arrested on October 10, 1952 in Philadelphia by officers of the Philadelphia Police Department who found on his person yellow bankers slips and sheets of paper containing notations of 1800 number plays (R. 7, 9, 21). At the time of his arrest, respondent told the police officers that he had been picking up numbers slips for about three months and was paid a salary of $40 per week (R. 13, 21).

Respondent was indicted in the Court of Quarter Sessions of Philadelphia County. The indictment contained multiple charges, including setting up a lottery, both public and private, and being concerned in the carrying on of a lottery both public and private; respondent pleaded guilty generally to the charges and was fined (R. 23-29).

Thereafter an information was filed against respondent in the United States District Court for the Eastern District of Pennsylvania, charging that he accepted wagers without having paid the special occupational tax imposed by Section 3290 (R. 1, 3). Respondent was found guilty by a jury, his timely motions for judgment of acquittal and for a new trial were denied, and he was sentenced to pay a fine of $1,000 (R. 51-61).

On appeal to the Court of Appeals for the Third Circuit, respondent contended, among other things, that as a pick-up man he was not "engaged in receiving wagers for or on behalf of" a numbers banker within the meaning of Section 3290. The court (one judge dissenting) accepted this contention, concluded that the trial court had erred in denying respondent's motion for acquittal, and reversed the judgment of the trial court (R. 64-68).[2]

## SUMMARY OF ARGUMENT.

Since November 1, 1951, the Federal Government has levied two types of taxes on gambling and certain of the persons engaged therein. One, a 10% excise tax on the gross amount of wagers, must be paid by each person "who is engaged in the business of accepting wagers" or "who conducts a wagering pool or lottery" for profit. Section 3285. The other, a $50 special occupational tax, must be paid by all those liable for the excise tax and by each person "who is engaged in receiving wagers for or on behalf of" anyone liable for the excise tax. Section 3290. This case involves an attempt by the Government to subject respondent to the criminal penalty imposed by Section 3294(a) because of his failure to pay the occupational tax.

1. A salaried pick-up man, such as respondent, is not covered by the plain meaning of the language of Section 3290. Respondent had no stake in the wagers placed in the numbers lottery and did not assume the risk of profit and loss involved therein. He was not liable, therefore, for the 10% excise tax since that tax applies only to those engaged in accepting wagers or conducting wagering pools as principals. The Government concedes this much. If, therefore, a pick-up man is to be subject to the occupational tax, it can only be because he "is engaged in receiving wagers for

2. Because of this conclusion, the majority of the court did not pass upon the other questions raised in respondent's appeal.

or on behalf of" the one who operates the lottery as a principal, i.e., the banker.

The key words in the phrase quoted above are "receiving wagers". They must be considered together for it is not enough that a person receive something used in the operation of the numbers lottery; he must receive a wager to be liable for the occupational tax. The wager is a transaction by which the player risks money on a particular number. This transaction he enters into with the numbers writer who is acting for and on behalf of the banker. At this point the wager has been completed and it has been received. The pick-up man takes no part in this transaction. The pick-up man is concerned only with the internal record keeping operations of the numbers bank, and he receives not wagers but records thereof.

When Congress used the words "receiving wagers" it had in mind only those with whom the wager was placed, i.e., the numbers writer. This is clearly indicated by the definition of wagers contained in Section 3285(b)(1). Hence, a pick-up man does not come within the terms of Section 3290 merely because he is a banker's agent. The agency involved must be of a specific character, namely, one in which the agent acts for the banker in the transaction which results in the placing of a wager.

In interpreting the term "receiving wagers" one must look first to the normal, literal meaning of the words. That meaning can hardly be said to embrace one who, like the pick-up man, plays no part in the making of a wager. To reach the contrary conclusion, one must indulge in the pretense that the wager is received by the numbers writer, is received again by the pick-up man, and is received possibly many more times by other employees of the numbers bank. Such stretching of the meaning of words cannot be justified in the interpretation of a taxing statute, the violations of which are subject to criminal sanctions.

2. The legislative history indicates that Congress did not intend to impose the occupational tax upon a pick-up man. The statute was enacted and its constitutionality sustained as a revenue raising measure. The excise tax on gross wagers was the device employed as the chief means of producing revenue. The occupational tax was conceived to facilitate the collection and enforcement of the excise tax. Neither tax was aimed primarily at the regulation or suppression of illegal gambling. Therefore, their application was confined to two well defined classes rather than to all those who were in some way or another part of a gambling operation. It is against this legislative background that the coverage of the occupational tax must be considered.

There are references in the Congressional committee reports which indicate that Congress considered the placing of wagers and the receiving of wagers as opposite sides of the same coin. One, therefore, cannot occur without the other. Hence, the numbers writer who acts on behalf of the banker in the transaction in which the wager is placed rather than the pick-up man is the one at whom the statutory term "receiving wagers" is directed.

The exclusion of the pick-up man from the coverage of the occupational tax is perfectly compatible with the registration provisions of the statute which are contained in Section 3291. Those provisions command the registration of the numbers banker and of those "engaged in receiving wagers for or on behalf of" the banker. The registration provisions were also designed to aid in the collection of the excise tax. The registration of the banker and his revelation of the writers who work for him, and the registration of the writer and his identification of the banker for whom he receives wagers furnish all of the information necessary to keep track of a numbers lottery and the gross amount of wagers placed therein. There was no necessity, therefore, for Congress to impose the occupational tax on the pick-up man or to compel his registration.

3. The Treasury Regulation which purports to include a pick-up man among those liable for the occupational tax is not controlling. The Treasury's interpretation cannot be supported either by the plain meaning of the statutory language or by any reference to Congressional purpose. Moreover, this interpretation is inconsistent with the Treasury's interpretation of other parts of the statute. The verbatim reenactment of the statute by Congress after the promulugation of the regulation is meaningless because there is nothing to indicate that the attention of Congress was focused upon the problem with which the regulation deals.

## ARGUMENT.

### 1. A Salaried Pick-Up Man, Such as Respondent, Is Not Covered by the Plain Meaning of the Language of Section 3290.

Section 471a of the Revenue Act of 1951, 65 Stat. 531, created two new taxes which became part of the Internal Revenue Code of 1939 as Sections 3285-3294. One of these taxes is the excise tax on gross wagers which, by the terms of Section 3285, must be paid by "each person who is engaged in the business of accepting wagers" and "each person who conducts any wagering pool or lottery" for profit. A wager is defined in Section 3285(b) and includes a wager made as part of a numbers lottery. Section 3286 provides for certain refunds of and credits against the excise tax.

The Government concedes that with respect to a numbers lottery the statute imposes the excise tax only on the banker and not upon the writer, pick-up man or any other employee of the banker. The propriety of this concession is readily apparent. Only the banker assumes the risk of profit or loss involved in operating the lottery, and the excise tax is obviously designed to fall upon only those who have a proprietary stake in the venture. A reading of the entire statute points clearly to this conclusion, and the legislative history explicitly confirms it.[3] In Regulation 132, Sections 325.21 and 325.24(a) the Treasury accepted this interpretation, and in *Sagonias v. United States*, 223 F. 2d 146, 147 (5 Cir.), cert. denied, 350 U. S. 840, the court

3. H. R. Rep. No. 586, 82d Cong., 1st Sess. 1951 (1951 U. S. Code Cong. & Admin. Serv., Vol. 2, p. 1841) and Sen. Rep. No. 871, 82d Cong., 1st Sess. 1951 (1951 U. S. Code Cong. & Admin. Serv., Vol. 2, p. 2093) where the following appears: "Liability for the wagering tax [the excise tax imposed by Section 3285] is placed upon the person who is engaged in the business of accepting wagers or who conducts the pool or lottery. Thus, the tax is to be collected from the bookmaker proper or from the person who conducts the pool or lottery as the principal. . . ."

held that liability for the excise tax in connection with the operation of a numbers lottery was limited to the banker.[4]

The second tax created by the Revenue Act of 1951—and the one involved in this case—is the $50 occupational tax which by the terms of Section 3290 must be paid by each person liable for the excise tax and by each person "engaged in receiving wagers for or on behalf of" any person liable for the excise tax. As the principal in a numbers lottery, the banker is subject to the occupational tax because of his liability for the excise tax. Since a pick-up man is not a principal in the lottery, he is subject to the occupational tax only if he is "engaged in receiving wagers for or on behalf of" the banker. We submit that the pick-up man is not so engaged, and that it is only the writer who "receives wagers" for the banker.

The key words in Section 3290 are "receiving wagers". These words must be considered together and nothing is to be gained by focusing, as the Government does (Brief, pp. 7-8), upon the word "receive" alone and the various uses to which it may be put. In interpreting Section 3290, the important thing is that it requires the receipt of "wagers". The receipt of something other than wagers is not enough to subject the recipient to the occupational tax. A wager is a transaction between the numbers player and the bank by means of which the former risks a certain amount of money on a particular number. The player enters into this transaction through the medium of the writer who participates therein on behalf of the bank and the banker. When the player has handed his money over to the writer and gets from him the tissue slip, the wagering transaction is completed, and both the player and the banker are committed. It follows that at this point the wager has been received on behalf of the banker, and it is the writer who has done the receiving.

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4. The dissenting judge in the court below, relying upon a dictum in *Daley v. United States*, 231 F. 2d 123, 128 (1 Cir.), stated that not only was a pick-up man "engaged in receiving wagers" but he was also "engaged in the business of accepting wagers" (R. 67-68).

The pick-up man takes no part in the transaction described above. All of his functions are performed subsequent to the placing of the wager by the player and after the receipt thereof by the writer. He does nothing more than collect certain records from the writer for delivery to the bank.[5] What he does on behalf of the banker is in no way connected with the wager as such. The pick-up man's services could be dispensed with without affecting the basic wagering transaction. In reality, a pick-up man is nothing more than a part of the internal record keeping operations of the numbers bank; the importance of his role in this regard cannot transform his receipt of records into a receipt of wagers.

In determining what Congress meant by the words "receiving wagers", one must consider the definition of the term "wager" which is set forth in Section 3285(b)(1). The term is defined as (A) any wager with respect to a sports event placed with a person engaged in the business of accepting such wagers, (B) any wager placed in a wagering pool with respect to a sports event, and (C) any wager placed in a lottery. As the definition indicates, in order for there to be a wager, there must be a "placing". It follows, therefore, as the majority of the court below observed (R. 65-66) that placing and receiving a wager are opposite sides of a single coin and that one cannot exist apart from the other. The inter-relation of the placing and receiving of a wager is recognized by the Treasury in Regulation 132, Section 325.24(a) which states:

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5. The Government suggests (Brief, p. 13) that the pick-up man "presumably" takes the money which has been wagered to the bank along with the slips which he collects from the writer. However, there is nothing in the present record to indicate that respondent, or any other pick-up man, has anything to do with the delivery of money to the bank (R. 15-16). We believe that even if a pick-up man collects both money and records from a writer he does not "receive wagers" since even then he plays no part in the placing of the wager. But in any event, a pick-up man who collects only records is clearly exempt from the tax.

> ". . . Any wager or contribution received by an agent or employee on behalf of such person [one in the business of accepting wagers or operating a wagering pool or lottery] shall be considered to have been accepted by and placed with such person."

Admittedly, the pick-up man is an agent of the banker, and he may in fact perform an essential function in the operation of the lottery as the Government argues (Brief, pp. 8, 15). But agency alone is not the key to liability for the occupational tax. The agency involved must be of a specific character, namely, one in which the agent acts for the banker in a transaction which results in the placing of a wager. Only the numbers writer falls into this category; the pick-up man is merely an agent who transmits the records of wagers received by the writer to the numbers bank.

In the *Sagonias* case, *supra* p. 11, the Fifth Circuit indicated the difficulty of fitting a pick-up man into the language of Section 3290 when it observed (223 F. 2d at 147-148):

> ". . . Its provisions clearly indicate the special tax applies to the principal or proprietor and all persons who were knowingly engaged or used by him to receive wagers. *While the express wording of Section 3290 does not include other employees directly involved in the operation, we think it would be inconsistent with the purpose of the statute to tax those who physically receive the wagers and exempt those whose duties were as important and as much a necessary part of the gambling operation.* . . ." (Emphasis added)

The case of *Francis v. United States*, 188 U. S. 375, upon which the Government relies (Brief, pp. 13-14) comes closer to supporting our position than it does that of the Government. That case involved a statute which prohibited the interstate transportation of a paper representing an interest in a lottery. This Court held that the interstate

transportation of duplicate slips by one whose duties were similar to those of the pick-up man did not violate the statute because the duplicate slips did not represent the purchaser's interest in the lottery. Likewise, in the present case, the slips collected by the pick-up man are not the equivalent of a wager placed by the numbers player and received by the writer. Moreover, in the *Francis* case the Court observed (188 U. S. at 377):

> ". . . It would seem from the evidence, . . . that Hoff and Edgar, the carrier, were agents of the lottery company. Thus the slips were at home, as between the purchaser and the lottery, when put into Hoff's hands. They had reached their final destination in point of law, and their later movements were internal circulation within the sphere of the lottery company's possession. . . ."

This observation aptly describes the situation in the present case. The wager was "at home" when put into the writer's hands, and at that point it had reached its "final destination"; the collection of the slips by the pick-up man and their later movements "were internal circulation within the sphere of" the numbers bank.

The normal, literal meaning of the words "receiving wagers", which is of prime importance in interpreting Section 3290, can hardly be said to embrace one who, like the pick-up man, plays no part in the making of a wager.[6] To reach the contrary conclusion, one must indulge, as the Government does (Brief, pp. 7, 12) in the pretense that the wager is received by the numbers writer, is received again by the pick-up man, and is received possibly many more times by other employees of the numbers bank. As the majority of the court below observed (R. 66):

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6. It is significant that in outlining the operations of a numbers lottery, one of the police officers described the writer as "the man that took the wager" and also stated "When you [the player] make this wager he [the writer] will give you a carbon copy". (R. 15).

> ". . . But we think this ignores the very real difference between a wager and a record of a wagering transaction. It is the banking record and not the wager which the pick-up man receives from the writer and transmits to the bank. The pick-up man no more receives wagers than a messenger, who carries records of customer transactions from a branch bank to a central office, receives deposits."

Moreover, to stretch the meaning of words in this fashion cannot be justified in the interpretation of a taxing statute the violations of which are subject to criminal sanctions.

Since the plain meaning of Section 3290 does not cover a pick-up man it must prevail. This Court has consistently refused to nullify statutes, however hard or unexpected the particular effect, when unambiguous language called for a reasonable result. *Ex parte Collett*, 337 U. S. 55, 61; *Cleveland v. United States*, 329 U. S. 14, 17-18; *Helvering v. City Bank Farmers Trust Co.*, 296 U. S. 85, 89; *Caminetti v. United States*, 242 U. S. 470. Moreover, as we will presently show, adherence to the plain meaning of the statutory language produces a result which is in accord with the Congressional purpose.

**2. Exclusion of a Pick-Up Man From the Terms of Section 3290 Is in Accord With the Legislative History.**

The Government contends (Brief, p. 11) that the occupational tax is applicable to "every person engaged in the occupation of gambling" and thus attempts to equate liability for the tax with guilt for the crime of gambling under state law. This position goes even further than that taken by the Treasury. See Regulation 132, Section 325.41, Example (1). The Government's argument is apparently based upon the notion that the legislative history reveals a general Congressional intent to regulate all phases of gambling through the imposition of the excise and occupational taxes.

However, the statute levying the taxes was enacted and its constitutionality sustained as a revenue raising measure, the chief feature of which is the excise tax. *United States v. Kahriger*, 345 U. S. 22. The occupational tax was conceived as a device to facilitate the collection and enforcement of the excise tax. Neither tax was aimed primarily at the regulation or suppression of gambling. For this reason, Congress confined the application of the taxes to two well defined classes—those engaged in gambling as principals and those "engaged in receiving wagers for or on behalf of" such principals. Had Congress chosen to extend the coverage of the occupational tax to include pick-up men and all others who participated in any way in gambling operations, it could have easily done so by substituting the phrase "who is an employee of any person so liable [for the excise tax]" for the phrase "who is engaged in receiving wagers for or on behalf of any person so liable" in Section 3290. Failure of Congress to do so indicates the limited scope which it intended to give to the language in that Section. Moreover, Congress was undoubtedly aware that if it attempted to make liability for the excise and occupational taxes coextensive with guilt under state criminal laws, serious doubts as to the constitutionality of the statute would arise. See *United States v. Kahriger, supra*, this page, 345 U. S. at 31, n. 10.

The intent of Congress to exclude pick-up men from liability for the occupational tax can be gleaned from the committee reports. In H. R. Rep. No. 586, 82nd Cong., 1st Sess. 1951 (1951 U. S. Code Cong. & Admin. Serv., Vol. 2, p. 1839) and Sen. Rep. 781, 82nd Cong., 1st Sess. 1951 (1951 U. S. Code Cong. & Admin. Serv., Volume 2, p. 2091), the following appears:

> ". . . A person is considered to be in the business of accepting wagers if he is engaged as a principal who, in accepting wagers, does so on his own account. The principals in such transactions are commonly referred to as 'bookmakers,' although it is not intended that

> any technical definition of 'bookmakers,' such as the maintenance of a handbook or other device for the recording of wagers, be required. *It is intended that a wager be considered as 'placed' with a principal when it has been placed with another person acting for him. Persons who receive bets for principals are sometimes known as 'bookmakers' agents' or as runners.'* . . .
>
> "As in the case of bookmaking transactions, *a wager will be considered as 'placed' in a pool or in a lottery whether placed directly with the person who conducts the pool or lottery or with another person acting for such a person.*" (Emphasis added.)

Thus, Congress clearly indicated that the placing and receiving of wagers were necessary concomitants. This expression of Congressional intent was incorporated into the statute by the definition of a "wager" in Section 3285(b)(1) and by the use of the phrase "receiving wagers for or on behalf of" a principal in Section 3290.

Moreover, the registration provisions of the statute which are contained in Section 3291 do not reveal any Congressional purpose to extend liability for the occupational tax to a pick-up man. Those provisions require the registration of all persons, who, like the numbers banker, are liable for the excise tax and of all persons "engaged in receiving wagers for or on behalf of" the banker. Registration was also designed to aid in the collection of the excise tax. Registration of the banker and his revelation of the numbers writers who work for him, and registration of the writer and his identification of the banker for whom he receives wagers furnish all the information necessary to keep track of a numbers lottery and the gross amount of wagers placed therein. In this connection, it should be remembered that the writer and the banker are known to one another because the writer uses a code identification symbol and because, in making payments to the winning players, the banker deals directly with the writer (R. 16).

There was no reason, therefore, for Congress to compel the registration of the pick-up man or to impose the occupational tax upon him.

The Government relies upon a statement in the Committee reports to the effect that enforcement of the excise tax "frequently will necessitate the tracing of transactions through complex business relationships, thus requiring the identification of the various steps involved." (Brief, p. 18). However, a legislative expression of such generality can be of no assistance in the interpretation of a statute. *Greenwood v. United States,* 350 U. S. 366, 374; *Federal Communications Commission v. Columbia Broadcasting System of Calif., Inc.,* 311 U. S. 132, 136. Moreover, as we have shown, registration of the banker and the writer and the payment by them of the occupational tax permits an effective tracing of the wager from the numbers player to the banker, and the pick-up man is not essential to the process.

The Government also points to statements by Representative Reed and Senator Kefauver made during the course of the Congressional debate upon the statute to support its contention that a pick-up man is liable for the occupational tax (Brief, pp. 19-20).[7] In the course of a lengthy speech analyzing the whole Revenue Act of 1951 and its impact upon governmental operations and the nation (97 Cong. Rec. 6892-6897), Representative Reed made a two-paragraph reference to the gambling taxes from which the Government has culled one sentence in which he said that the statute imposed a 10% tax on bets made with bookmakers and lottery operators, and "a $50 a year occupational tax on such professional gamblers and their agents." The single word "agents" used in a speech which made but passing mention of the statute here in question can hardly be said to be indicative of any specific Congressional intent.

7. In addition to these statements, other references to the gambling taxes may be found in 97 Cong. Rec. 6890-6892, 6902, 6904-6906, 6971-6972, 11,601, 11,644-11,645. None of them sheds any light on the problem before the Court.

In his speech, Senator Kefauver stated that under the statute "numbers operators, their agents and runners" would be required to register and pay an occupational tax of $50 a year. He also said that enforcement of the statute would involve tracing transactions "through dummy corporations, agents, subagents, and runners, . . ." His observations are no more enlightening than those of Representative Reed. Moreover, they were made in the course of a speech in opposition to the enactment of the gambling taxes (97 Cong. Rec. 12,230-12,237). Statements made in the course of legislative debate by those opposed to a statute under consideration can never be considered an authoritative guide to the interpretation of the statute. *Mastro-Plastics Corp. v. N. L. R. B.*, 350 U. S. 270, 288; *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U. S. 384, 394-395; *McCaughn v. Hershey Chocolate Co.*, 283 U. S. 488, 493-494.

**3. The Treasury Regulation Should Be Disregarded.**

Treasury Regulation 132, Section 325.41, Example (2) states:

> "B operates a numbers game. He has an arrangement with ten persons, who are employed in various capacities, such as bootblacks, elevator operators, newsdealers, etc., to receive wagers from the public on his behalf. B also employs a person to collect from his agents the wagers received on his behalf.
>
> "B, his ten agents, and the employee who collects the wagers received on his behalf are each liable for the special tax."

Admittedly, the regulation purports to include a pick-up man within the scope of Section 3290. It accomplishes this by making the assumption that what he collects is "wagers". It is perhaps also significant that in the example the only ones whose functions are specifically described as "receiving wagers" on behalf of the operator of a numbers lottery" are those with whom the public places the wagers, i.e., the writers.

Although this administrative interpretation may be entitled to great weight, it does not preclude this Court from making its own interpretation of Section 3290. The Treasury may not by regulation add to the statute something which is not there. *Maass v. Higgins*, 312 U. S. 443; *Koshland v. Helvering*, 298 U. S. 441, 446-447. As we have already shown, the statutory language plainly compels the conclusion that a pick-up man like respondent who takes no part in the placing of a wager and has no contact with the player does not "receive wagers for or on behalf of" the numbers banker. As we have also demonstrated, this interpretation is supported by the legislative history of the statute. Therefore, the Treasury regulation has no valid basis.

Moreover, Example (2) in Section 325.41 is inconsistent with other parts of Regulation 132. We have already pointed out (*supra* p. 13), that in Section 325.24(a), the Treasury specifically recognizes the interrelation between the placing and receiving of a wager. In Section 325.25(a) the Treasury acknowledges that the wagering transaction has been completed when the player places his bet with the writer by providing that the excise tax attaches when "a person who operates a wagering pool or lottery for profit, accepts a wager or contribution from a bettor." This acknowledgment is reiterated in Section 325.32(a)(1)(C)(ii) which provides that every person required to pay the excise tax shall keep records which will show "the gross amount of wagers . . . accepted for his account by agents at any place other than a registered place of business of the taxpayer . . ." That it is the writer rather than the pick-up man who "receives wagers on behalf of" the banker is also indicated in Section 325.51 which states that "every person who is engaged in receiving wagers . . . for or on behalf of another person . . . shall keep a record showing for each day . . . the amount [of money] turned over to the person on whose behalf the wagers were received, and the name and address of such person . . ."

The Treasury's inconsistency is most clearly revealed by a comparison of Example (1) with Example (2) in Section 325.41. Example (2) purports to make a pick-up man liable for the occupational tax. Example (1) states that neither a secretary nor a bookkeeper employed by a bookmaker is liable for the tax. Clearly the pick-up man's liability is based upon collections which he makes from the writers employed by the banker. Yet the bookkeeper, whose duties like those of the pick-up man are incident to the banker's internal record-keeping, and who in the pursuit of those duties would come into possession of the very things collected by the pick-up man from the writer, is not subject to the tax according to the Treasury. The justification for this distinction is not apparent.

The Government attempts to inject the Treasury's application of the occupational tax to a pick-up man into Section 3290 by reference to the adoption of the Internal Revenue Code of 1944. The Government argues that when Congress included the gambling taxes in Chapter 35 of the 1954 Code, Title 26 U. S. C., Sections 4401-4423, it reenacted verbatim the provisions of Section 3290 as Section 4411 of the new Code, thus indicating Congressional approval of the Treasury's interpretation (Brief, pp. 21-22). Although this Court has held in some instances that reenactment of a statute after an administrative interpretation thereof indicates legislative approval of the interpretation, it has done so only when that interpretation has been of long duration or when the legislative history has indicated that Congress was well aware of it and the problem with which it dealt.[8]

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8. The cases cited by the Government (Brief, p. 21), clearly illustrate this. In *Corn Products Refining Co. v. Commissioner*, 350 U. S. 46, 53, the Treasury ruling had been in effect for 20 years, had been consistently approved by the courts, and Congress had made no change in the statute despite three reenactments thereof. In *Commissioner v. Flowers*, 326 U. S. 465, the regulation in question was precisely the same as that issued under prior and succeeding revenue acts containing the same statutory language. In *Commissioner v.*

But the Court has often pointed out that reenactment of a statute following administrative interpretation or judicial decision is an unreliable indicium at best and that it is dangerous to speculate about legislative intent on the basis of mere reenactment which is accompanied by no Congressional explanation of the reasons therefor. See, e.g., *Commissioner v. Glenshaw Glass Co.*, 348 U. S. 426, 431; *Commissioner v. Church's Estate*, 335 U. S. 632, 647-651; *Girouard v. United States*, 328 U. S. 61, 69-70; *Helvering v. Hallock*, 309 U. S. 106, 119-121. When Congress enacted Section 4411 of the 1954 Code, the Treasury regulation in question had been in effect for less than three years and the decision in the *Sagonias* case, *supra*, p. 11, applying it had not yet been announced. Moreover, in adopting Section 4411, Congress, as the committee reports indicate, said nothing meaningful. H. R. Rep. No. 1337, 83rd Cong., 2nd Sess. 1954, A. 325; Sen. Rep. No. 1622, 83rd Cong., 2nd Sess. 1954, 482.

## CONCLUSION.

For the reasons set forth herein, we respectfully submit that the judgment of the Court of Appeals should be affirmed.

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*Wheeler*, 324 U. S. 542, 546-547, Congress had enacted the substance of the regulation as a clarifying amendment of the statute. In *Helvering v. Griffiths*, 318 U. S. 371, 395-397, the statute was reenacted after a long controversy over its meaning in which the correctness of the preexisting regulation was assumed throughout. *Helvering v. Winmill*, 305 U. S. 79 involved the interpretation of the Revenue Act of 1932; the regulation, which dealt with income tax deductions, had been in existence since 1916, and Congress had not changed the statutory provision on which it was based although it had altered other parts of the statute dealing with deductions.